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730 PAGE 759

Prepared By and Return To:
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Memphis, Tennessee 38119
(901) 763-4000

BK 730 PG 759
W.E. DAVIS ON CLK.

By: P. Stanley

AGREEMENT TO MODIFY PROMISSORY NOTE 022746;
SHELBY COUNTY, TENN. DEED OF TRUST NO. BH 6483;
DESOTO COUNTY, MISS. DEED OF TRUST BOOK 490, PAGE 320;
MODIFICATION AGREEMENTS CK 3409, CU 7906, DK 2059, DW 5502,
AND EJ 9298, IN SHELBY COUNTY, TENNESSEE; AND MODIFICATION
AGREEMENTS BOOK 555, PAGE 42; BOOK 582, PAGE 672;
BOOK 629, PAGE 397; BOOK 630, PAGE 284; AND
BOOK 709, PAGE 746; IN DESOTO COUNTY, MISSISSIPPI

THIS AGREEMENT is made and entered into this the 7th day of October, 1994, by and between WATERPROOFING SYSTEMS, INC., a Tennessee Corporation, (hereinafter referred to as "Borrower"), WILLIAM E. WARNER AND CHELLIE WARNER (hereinafter referred to as "Guarantors"), WEATHERPROOF SYSTEMS, INC., a Tennessee Corporation (hereinafter referred to as "Assuming Party") and UNITED AMERICAN BANK OF MEMPHIS (hereinafter referred to as "Bank").

W I T N E S S E T H:

WHEREAS, Borrower presently has a line of credit (the "Loan") with Bank in the maximum principal amount of Two Hundred Fifteen Thousand and NO/100 (\$215,000) Dollars evidenced by Promissory Note No. 22746 (the "Note") in the original principal amount of One Hundred Twenty Five Thousand and NO/100 (\$125,000) Dollars being executed by Borrower bearing the date of September 29, 1989, and being modified by Agreements to Modify Promissory Note, Deeds of Trust as more particularly described below (the "Modification Agreement"); and

WHEREAS, said Loan is secured by a Deed of Trust on certain real property located at and municipally known as 2193 Frisco, Memphis, Shelby County, Tennessee, said property being more particularly described in the Deed of Trust of record as Instrument No. BH 6483 in the Register's Office of Shelby County, Tennessee; and

"MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX
PURPOSE IS: \$-0-"

WHEREAS, said Loan is also secured by a Deed of Trust on certain real property located at and municipally known as 4531 White Oak, Nesbit, DeSoto County, Mississippi, said property being more particularly described in the Deed of Trust recorded at Book 490, Page 320, in the Office of the Chancery Court Clerk, DeSoto County, Mississippi; and

WHEREAS, said Promissory Note and Deeds of Trust were modified by Modification Agreements recorded as Instrument Nos. CK 3409, CU 7906, DK 2059, DW 5502 and EJ 9298 in the Register's Office of Shelby County, Tennessee, and Modification Agreements recorded at Book 555, Page 42; Book 582, Page 672; Book 629, Page 397, and Book 630, Page 284 and Book 709, Page 746 in the Office of the Chancery Court Clerk of DeSoto County, Mississippi; and

WHEREAS, Borrower and Bank desire to further modify the terms of the Note and Modification Agreement; and

WHEREAS, Bank and Borrower agree to further amend the terms of the Loan as set forth hereinbelow upon the agreement of the Borrower to make, keep and perform all of the terms, conditions and covenants set forth in the Note and Modification Agreement, as hereinbelow modified and amended,

NOW, THEREFORE, for and in consideration of the mutual advantages accruing to the parties hereto, one to the other, and for good and valuable consideration, the receipt and adequacy of which is hereby expressly acknowledged, the parties covenant and agree as follows:

1. The Note shall be reduced from \$215,000 to \$200,000.
2. The Note shall be restructured and divided into two (2) components, to-wit: A Term Loan in the principal amount of Fifty Thousand and NO/100 (\$50,000) Dollars; and a Line of Credit in the maximum principal amount of One Hundred Fifty Thousand and NO/100 (\$150,000) Dollars.
3. The Term Loan shall mature on April 7, 1998. The rate of interest on the Term Loan shall be and is hereby the Prime Rate of interest as established by the CitiBank of New York ("CitiBank

Prime") plus two and one-half (2.50%) percent. Repayment of the Term Loan shall be structured as follows: Commencing November 7, 1994 and continuing on the same date of each succeeding month thereafter through and including April 7, 1995, Borrower shall make payments of interest only. Effective May 7, 1995, Borrower shall commence making payments of principal in the amount of One Thousand Three Hundred Eighty Eight and 89/100 (\$1,388.89) Dollars plus interest and continue making such payments on the 7th day of each succeeding month thereafter through and including March 7, 1998. On April 7, 1998, all outstanding principal and accrued interest on the Term Loan shall become due and payable.

4. The Line of Credit shall mature on August 7, 1995. The rate of interest on the Line of Credit shall be CitiBank Prime plus two and one-half (2.50%) percent. Repayment of the Line of Credit shall be structured as follows: Accrued interest shall be payable MONTHLY commencing on November 7, 1994, and continuing to be due on the same day of each succeeding month thereafter with a final payment of all unpaid principal and accrued interest due at maturity, August 7, 1995.

5. All collateral securing the Loan shall remain and continue in place as collateral for both the Term Loan and the Line of Credit.

6. As additional collateral, Borrower shall and does hereby pledge and assign to Bank the following collateral:

A. Life Insurance. Any and all of its interest as owner, beneficiary or otherwise in that policy of insurance issued or to be issued on the life of William E. Warner by Kemper Life Assurance Company in the amount of \$200,000.

B. Certificate of Deposit. Savings Certificate of Deposit No. 27106, and any renewals, replacements or accessions thereof, as well as any certificate(s) of deposit or other property which may from time to time be acquired directly or indirectly from the proceeds of such certificate of deposit, in the principal amount of \$23,500.00, together with all interest due or to become

due, issued by United American Bank of Memphis, bearing date of the 27th day of September, 1994, due and payable on the 27th day of September, 1995, and any and all extensions or renewals thereof in whole or in part, and also any other indebtedness or liabilities now existing or hereafter arising, including, but not limited to, future advances, due or to become due, absolute or contingent, and whether several, joint, or joint and several, of the Borrower to Bank.

7. In consideration of Bank's restructure of this credit, Weatherproof Systems, Inc. shall:

A. On a monthly basis, provide to Bank within thirty (30) days of month-end its in-house financial statements.

B. On an annual basis, provide to Bank within ninety (90) days of fiscal year-end its audited financial statements.

C. Maintain a debt to net worth ratio of no greater than 1.3 to 1.0 by fiscal year-end, April 30, 1995.

8. Any default or Event of Default with respect to either the Term Loan or the Line of Credit shall be deemed a default or Event of Default (as the case may be) as to the entire Loan (both the Term Loan and the Line of Credit).

9. William E. Warner and Chellie Warner hereby acknowledge and consent to the terms of this Agreement and affirm that their joint and several personal Guaranties in the amount of \$200,000 in favor of Bank, shall apply to both the Term Loan and the Line of Credit and shall continue in full force and effect without amendment or modification.

10. Waterproofing Systems, Inc. hereby acknowledges its corporate Guaranty in favor of Bank in the amount of \$200,000. To secure his Guaranty described above, William E. Warner shall and does hereby pledge and assign to Bank any and all of his interest as owner or insured in that policy of insurance on his life, issued by The Federal Kemper Life Assurance Company in the amount of \$200,000.

11. It is expressly understood and agreed that the Note and Modification Agreement are only modified as expressly provided herein and all other terms, conditions and covenants shall remain in full force and effect and the parties hereto ratify and affirm said provision.

IN WITNESS WHEREOF, the parties execute this Modification Agreement on the day and date first above written.

BORROWER:

WATERPROOFING SYSTEMS, INC.

By: Chellie B. Warner
CHELLIE WARNER, President

ASSUMING PARTY:

WEATHERPROOF SYSTEMS, INC.

By: William E. Warner
WILLIAM E. WARNER, President

GUARANTORS:

William E. Warner
WILLIAM E. WARNER

Chellie Warner
CHELLIE WARNER

WATERPROOFING SYSTEMS, INC.

By: Chellie Warner
CHELLIE WARNER, President

BANK:

UNITED AMERICAN BANK OF MEMPHIS

By: Steve W. Klyce
STEVE W. KLYCE, Vice President

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the State and County aforesaid, personally appeared **CHELLIE WARNER**, with whom I am personally acquainted and who, upon oath, acknowledged herself to be President of **WATERPROOFING SYSTEMS, INC.**, a Tennessee Corporation, the within named bargainor, and that she as such President, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by herself as such President.

WITNESS my hand and Seal this 1 day of October, 1994.

My Commission Expires:

[Signature]
Notary Public

10-16-94

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public, of the State and County aforesaid, personally appeared **WILLIAM E. WARNER**, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be President of **WEATHERPROOF SYSTEMS, INC.**, the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President.

WITNESS my hand and seal at office on this 1 day of October, 1994.

[Signature]
Notary Public

My Commission Expires:

10-16-94

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared **WILLIAM E. WARNER AND CHELLIE WARNER**, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

WITNESS my hand and Seal this 1 day of October, 1994.

[Signature]
Notary Public

My Commission Expires:

10-16-94

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public, of the State and County aforesaid, personally appeared **CHELLIE WARNER**, with whom I am personally acquainted, and who, upon oath, acknowledged herself to be President of **WATERPROOFING SYSTEMS, INC.**, the within named bargainor, a corporation, and that she as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by herself as President.

WITNESS my hand and seal at office on this 7 day of October, 1994.

[Signature]
Notary Public

My Commission Expires:

10-16-94

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the State and County aforesaid, personally appeared **STEVE W. KLYCE**, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Vice President of **UNITED AMERICAN BANK OF MEMPHIS**, the within named bargainor, a Tennessee banking corporation, and that he as such Vice President, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as Vice President.

WITNESS my hand and Seal this 7 day of October, 1994.

ES6203

[Signature]
Notary Public

My Commission Expires:

10-16-94

(AG)lsa2/waterprf.mod

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| ES 6203 | |
| D/S <u>7</u> | DR# <u>5</u> |
| Pos. <u>7</u> | Item <u> </u> |
| Vol. <u> </u> | |
| REGISTER'S FEE | |
| RECORDING FEE | <u>2800</u> |
| WT <input type="checkbox"/> MISC FEE | |
| TOTAL | |
| STATE OF TENNESSEE SHELBY COUNTY CITY OF MEMPHIS REGISTER | |